

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	
Compatibility with Enhanced 911 Emergency)	CC Docket No. 94-102
Calling Systems)	
)	
Petitions for Waiver of Enhanced 911 Phase II)	
Requirements)	

ORDER

Adopted: October 28, 2005

Released: October 28, 2005

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address five petitions for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed on behalf of seven Tier III¹ wireless service providers (collectively, Petitioners).² Specifically, each Petitioner seeks an extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve ninety-five percent penetration, among their subscribers, of location-capable handsets by December 31, 2005.³ In addition, one Petitioner, MMC, seeks an extension of relief previously granted of the requirement that it ensure that 100 percent of all new digital handsets activated are location-capable.⁴

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when

¹ Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

² See Petition of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Waiver of Sections 20.18(g)(1)(iv) and 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed July 20, 2005 (MMC Petition); Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed July 26, 2005 (NWMC Petition); Petition of RSA 1 Limited Partnership dba Cellular 29 Plus for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed July 27, 2005 (Cellular 29 Petition); Petition of Iowa RSA 2 Limited Partnership dba Lyrix for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed July 27, 2005 (Lyrix Petition); and Petition of Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, Illinois Valley Cellular RSA 2-III Partnership for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed August 22, 2005 (IVC Petition).

³ See 47 C.F.R. § 20.18(g)(1)(v).

⁴ See MMC Petition at 3; 47 C.F.R. § 20.18(g)(1)(iv).

the requesting carrier has met the Commission's standard for waiver of the Commission's rules.⁵ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁶

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the ninety-five percent handset penetration requirement, until October 28, 2006, is warranted subject to certain conditions described below. These conditions are particularly important because petitioners have failed to demonstrate a "clear path to full compliance" with the Commission's December 31, 2005, handset penetration requirement consistent with the Commission's E911 waiver standards.⁷ With respect to MMC's request for extension of time to meet the requirement that it ensure that 100 percent of all new digital handsets activated are location-capable, we find that MMC has not provided sufficient information to warrant a waiver under the Commission's E911 waiver criteria. MMC has failed to demonstrate a "clear path to full compliance" with the Commission's 100 percent handset activation requirement. We therefore cannot grant MMC's request for waiver based on the record before us. As a Tier III carrier that may face unique circumstances, however, and in light of the totality of the record before us, we will afford MMC additional time to augment the record to demonstrate a clear path to full compliance with the 100 percent handset activation requirement for the Commission to consider. Without further action on MMC's waiver request, the deadline for compliance with the 100 percent activation requirement will be April 1, 2006.

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).¹⁰ The Commission's rules also establish phased-in schedules for

⁵ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

⁶ See *id.*

⁷ Because we find that some relief from the ninety-five percent handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Petitioners have met the Commission's waiver standard. Although demonstration of a "clear path to full compliance" is not required to warrant some relief under the ENHANCE 911 Act, this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted.

⁸ See 47 C.F.R. § 20.18(e).

⁹ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

¹⁰ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3, *Location-Capable Handsets*.

carriers to deploy any necessary network components and begin providing Phase II service.¹¹ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.¹²

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.¹³ After ensuring that 100 percent of all new digital handsets activated are location-capable, licensees must achieve ninety-five percent penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹⁴

B. Applicable Waiver Standards

6. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.¹⁵ Pursuant to Section 1.925(b)(3) of the Commission's Rules, the Commission may grant a request for waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶

7. Moreover, the Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."¹⁷ To the extent that a carrier bases its request for relief on delays that were beyond

¹¹ See 47 C.F.R. §§ 20.18(f), (g)(2).

¹² See 47 C.F.R. § 20.18(j)(1).

¹³ See 47 C.F.R. § 20.18(g)(1).

¹⁴ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 ("wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003)(*Order to Stay*)("under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted").

¹⁶ See 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹⁷ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*). To the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, it must demonstrate "a clear path to full compliance" by, for example, providing concrete (continued....)

its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.¹⁸ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁹ A carrier seeking a waiver based on extraordinary financial hardship may strengthen its justification by submitting documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.²⁰ The Commission also noted that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.²¹

8. In applying these criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.²² In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

9. Finally, distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).²³ The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²⁴

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evidence of its documented commitment to a date certain for that transition to be accomplished. *See Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹⁸ *See Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁹ *See id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

²⁰ *See id.*

²¹ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

²² *See Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²³ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²⁴ *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

C. Petitions for Waiver

10. Petitioners are Tier III carriers operating analog and CDMA digital networks, with some offering TDMA as well.²⁵ All but one of the Petitioners state that they have met all of the Commission's location-capable handset sale and activation benchmarks contained in Section 20.18(g)(i)-(iv).²⁶ The one exception is MMC, which requests additional time to ensure that 100 percent of all new digital handsets activated are location-capable.²⁷ Prior to filing the instant petition for waiver, MMC was among the Tier III carriers that requested and were granted relief from the handset benchmark deadlines in the *Tier III Carriers Order*.²⁸ Pursuant to the *Tier III Carriers Order*, MMC was granted limited relief from the 100 percent handset activation requirement until October 1, 2005.²⁹ In its current request, MMC seeks an additional six months, *i.e.*, until April 1, 2006, to ensure that all new digital handsets activated are location-capable, premised on receipt of eligible telecommunications carrier (ETC) designation and completion of its CDMA overlay within this time period.³⁰

11. All of the Petitioners, including MMC, request an extension until January 31, 2007 of the December 31, 2005 deadline by which handset-based carriers must achieve ninety-five percent penetration among their subscribers of location-capable handsets.³¹ In support, Petitioners assert similar justifications. Petitioners note that there are areas where a subscriber using an analog or TDMA handset can obtain coverage but cannot do so with a location-capable CDMA phone.³² Also, Petitioners state that, despite attempts to educate existing analog and TDMA subscribers that their phones lack the ability to provide location information, and offers of financial incentives to convert to location-capable CDMA phones, a number of customers have opted to retain their current phones.³³ For these reasons, Petitioners believe that they have presented circumstances warranting relief under the Commission's waiver standards, as well as under the ENHANCE 911 Act.

²⁵ See MMC Petition at 2 (offers analog, TDMA and CDMA services); NWMC Petition at 2 (offers analog, TDMA, and CDMA); Cellular 29 Petition at 2 (offers analog and CDMA); Lyrix Petition at 2 (analog and CDMA); IVC Petition at 2 (analog, TDMA, and CDMA). Each Petitioner had been part of the Tier IV Coalition for Wireless Handset-based E911, which filed a Petition for Partial Forbearance from E911 Legacy Handset ALI Compatibility Requirements for Wireless Subscribers Under Rule Section 20.18(g)(1)(v) on December 28, 2004. However, each Petitioner has stated that it is filing the instant petitions "in lieu of continuing to prosecute the Forbearance Petition." MMC Petition at 3; NWMC Petition at 3; Cellular 29 Petition at 3; Lyrix Petition at 3; IVC Petition at 3.

²⁶ See NWMC Petition at 1, 4; Cellular 29 Petition at 1, 3; Lyrix Petition at 1, 3; IVC Petition at 1-2, 4.

²⁷ See MMC Petition at 3.

²⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7732-7733 ¶¶ 59-61.

²⁹ See *id.*

³⁰ See MMC Petition at 2-3.

³¹ See MMC Petition at 9; NWMC Petition at 7; Cellular 29 Petition at 6; Lyrix Petition at 6; IVC Petition at 7.

³² See, e.g., NWMC Petition at 2-3.

³³ See *id.* at 4.

III. DISCUSSION

A. 100% Activation Benchmark

12. MMC operates an analog and TDMA network, and has overlaid this network with CDMA at all but nine remaining cell sites.³⁴ Prior to filing the instant petition, MMC had requested indefinite relief of the requirement that it ensure that 100 percent of all new digital handsets activated are location-capable, until it received designation as an ETC for purposes of receipt of universal service funding.³⁵ In the *Tier III Carriers Order*, the Commission declined to grant indefinite relief, noting that the outcome of the ETC proceeding was uncertain, and that MMC had not otherwise provided specific financial information to support its financial hardship, or explained why it had not sought funding from any other available federal, state, or local sources.³⁶ However, because MMC reported that it had not received PSAP requests for Phase II service, the Commission granted MMC an additional six months from the date of release of the *Tier III Carriers Order* (until October 1, 2005) to ensure that 100 percent of all new digital handsets activated are location-capable.³⁷

13. As noted above, to the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, it must demonstrate “a clear path to full compliance.”³⁸ Furthermore, carriers claiming financial hardship must provide specific factual information in support of their claims, including efforts to obtain financing from available sources.³⁹ MMC filed an application with the state of Missouri for ETC designation in order to fund its CDMA overbuild for nine remaining cell sites.⁴⁰ Although MMC’s request for ETC status was denied, MMC has re-filed its ETC application and been granted expedited hearing of its case.⁴¹ MMC states that, upon receipt of ETC designation, it would be in a position to complete its CDMA overbuild at the nine remaining cell sites within six months, at which point it would be able to ensure that 100 percent of all new digital handsets activated were location-capable.⁴²

14. We conclude that MMC has not provided information sufficient to meet the Commission’s well-established criteria for a waiver of its E911 Phase II rules. In particular, MMC has failed to show that it has a clear path to full compliance with the 100 percent handset activation requirement. As was the case in the March 2005 *Tier III Carriers Order*, the ETC designation that MMC claims is necessary to complete its overbuild remains an uncertain prospect.⁴³ However, we acknowledge that MMC has responded to the

³⁴ See MMC Petition at 2.

³⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7732-7733 ¶ 59.

³⁶ See *id.* at 7733 ¶ 61.

³⁷ See *id.*

³⁸ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

³⁹ See *id.* at 20997 ¶ 29.

⁴⁰ See MMC Petition at 2-3.

⁴¹ See *id.* MMC added that the “Missouri Public Service Commission Staff, as well as the Office of Public Counsel, have filed testimony supporting the grant of the MMC ETC designation.” *Id.*

⁴² See *id.* at 3.

⁴³ See *Tier III Carriers Order*, 20 FCC Rcd at 7733 ¶ 61.

Tier III Carriers Order's direction to support its claim of financial hardship. Specifically, MMC states that "its lender has categorically advised that absent ETC designation, MMC is unable to utilize funds to overbuild the remaining 9 of its rural-most cell sites with CDMA technology."⁴⁴ Further, in regard to efforts to obtain funding from other sources, MMC adds that "[d]espite its best efforts, it has been unable to locate any such alternate sources for such funding," and that Missouri has not enacted any E911 cost-recovery legislation.⁴⁵ In light of this information, we find that MMC has supported its claims of financial hardship by providing information relating to its lender constraints, and its exploration of other sources of financing.⁴⁶ Although we cannot grant MMC's request for failure to meet the "clear path to full compliance" element of the Commission's waiver standard, we find it appropriate, considering the totality of the circumstances, and consistent with the general policy underlying the ENHANCE 911 Act, to afford MMC additional time in which it may augment the record to address the insufficiency of its request for extension. Without further action on MMC's waiver request, the deadline for compliance with the 100 percent activation requirement will be April 1, 2006. We also impose certain conditions and reporting requirements on MMC so that we may monitor progress towards compliance.

B. Handset Penetration Requirement

15. We believe that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for ninety-five percent location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II will be implemented and ensure that Phase II is fully implemented as quickly as possible.⁴⁷ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.⁴⁸ Accordingly, when addressing requests for waiver of the ninety-five percent handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.⁴⁹

16. Consistent with that directive, we believe that the Tier III Petitioners have shown under the ENHANCE 911 Act that a limited grant of the requested waiver of the December 31, 2005, benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of their progress towards full compliance with the Commission's location-capable handset penetration requirement.

⁴⁴ MMC Petition at 4.

⁴⁵ See *id.* at 4-5.

⁴⁶ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 29.

⁴⁷ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

⁴⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

⁴⁹ See *supra* ¶ 9.

17. As an initial matter, each Petitioner, with the exception of MMC, notes that it has met all of the Commission's location-capable handset sale and activation benchmarks.⁵⁰ We find that timely meeting applicable sale and activation deadlines demonstrates some effort on the part of Petitioners to comply with the ultimate ninety-five percent penetration requirement. In particular, ensuring that 100 percent of all new digital handsets activated are location-capable is an important step that should eventually lead to ninety-five percent penetration of location-capable handsets.

18. As a basis for granting the requested relief, Petitioners state that they have a number of subscribers with analog handsets who, for several reasons described below, have been reluctant to transition to location-capable handsets. All of the Petitioners presently have varying percentages of subscribers with analog handsets, and claim that these percentages may increase due to new analog customers requesting to port their numbers into Petitioners' networks.⁵¹ Petitioners state that their service areas are "predominantly sparsely populated rural areas lacking concentrated centers of commercial and industrial activity"⁵² and that "because of the propagation characteristics of digital technologies coupled with the lower power of digital handsets as compared to analog 'bag phones' and mobile units, there are areas where a subscriber using an analog unit can obtain coverage where a CDMA digital subscriber cannot."⁵³ Thus, Petitioners argue that in areas where subscribers can obtain only analog coverage, subscribers would be unable to complete any emergency calls at all should they convert to location-capable handsets.⁵⁴ Further, Petitioners that offer TDMA⁵⁵ in addition to analog service state that the coverage available with TDMA handsets also exceeds the coverage provided by CDMA,⁵⁶ and that CDMA coverage might be lacking in adjacent markets where Petitioners' customers tend to roam.⁵⁷ For these reasons,

⁵⁰ See NWMC Petition at 4; Cellular 29 Petition at 3; Lyrix Petition at 3; IVC Petition at 4. As described above, we do not grant MMC's request for an extension of time in which to ensure that 100 percent of all new digital handset activations are location-capable, but afford MMC additional time in which it may augment the record to address the insufficiency of its request. See *supra* ¶ 14.

⁵¹ See MMC Petition at 6 (twelve percent); NWMC Petition at 5 (2.1 percent); Cellular 29 Petition at 4 (three percent); Lyrix Petition at 4 (two percent); IVC Petition at 5 (3.73 percent of subscriber base plus approximately seven percent consisting of analog units installed in automobiles with on-board customer care and emergency capabilities).

⁵² MMC Petition at 2; NWMC Petition at 2; Cellular 29 Petition at 2; Lyrix Petition at 2; IVC Petition at 2.

⁵³ MMC Petition at 3; NWMC Petition at 2; Cellular 29 Petition at 2; Lyrix Petition at 2; IVC Petition at 2-3. NWMC, Cellular 29, Lyrix, and IVC add that each "has begun adding CDMA fill-in sites to further enhance its CDMA digital coverage but areas remain where the use of higher-power analog handset[s] . . . allow coverage where a CDMA handset does not." NWMC Petition at 3; Cellular 29 Petition at 2; Lyrix Petition at 3.

⁵⁴ See MMC Petition at 7; NWMC Petition at 5; Cellular 29 Petition at 5; Lyrix Petition at 5; IVC Petition at 5.

⁵⁵ Petitioners note that "there are no ALI-capable TDMA handsets available in the marketplace." MMC Petition at 8; NWMC Petition at 6.

⁵⁶ See MMC Petition at 8 (stating that "subscribers utilizing CDMA handsets have far more limited coverage than those using analog or TDMA handsets.").

⁵⁷ See NWMC Petition at 3, 6; IVC Petition at 7. MMC reports that sixty-four percent of its subscribers use TDMA handsets, NWMC reports 35.6 percent, and IVC reports 5.6 percent. See MMC Petition at 8; NWMC Petition at 6; IVC Petition at 7.

Petitioners report that some TDMA subscribers elect to retain their handsets and that some that had converted to CDMA returned such handsets for TDMA phones.⁵⁸

19. Each Petitioner states that, with respect to its analog and, as applicable, TDMA customers, it has “launched an educational campaign to advise its existing . . . subscribers that those handsets will not be capable of providing locational information when a 911 call is placed, even after E911 is established by the PSAPs” and “offered financial incentives for those subscribers to convert to CDMA digital calling plans and upgrade their handsets to ALI-compatible handsets.”⁵⁹ Despite these efforts, Petitioners assert that “a significant number of [their] existing analog customers have opted to retain their analog phones.”⁶⁰ Due to the coverage advantages cited by Petitioners for both analog and TDMA service, for which no location-capable handsets are available, Petitioners claim that a number of Petitioners’ customers have been unwilling to exchange their current analog or TDMA phones for new location-capable phones, despite the potential location information benefits that location-capable phones offer and notwithstanding Petitioners’ educational efforts and financial incentives to encourage customers to upgrade their handsets.

20. We find that Petitioners warrant some relief under the ENHANCE 911 Act. If required to transition analog subscribers to digital CDMA handsets in the most rural portions of their service areas, some subscribers would be unable to complete a phone call at all,⁶¹ including emergency calls. Accordingly, it appears likely that strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and thus “would result in consumers having decreased access to emergency services,” within the meaning of the ENHANCE 911 Act,⁶² at least in some cases.

21. We note, however, that the Petitioners failed to provide sufficient information to warrant the full relief requested because Petitioners have not adequately shown a “clear path to full compliance” with the ninety-five percent handset penetration requirement. Petitioners have not provided us with specific information concerning the number of subscribers that would be placed in a situation where they would be unable to make any wireless emergency calls if required to upgrade to a location-capable handsets. Petitioners also do not provide specific information regarding the steps they will take to transition analog subscribers to location-capable handsets or to work with their equipment vendor to accelerate the availability of higher-power location-capable handsets. Further, Petitioners have not provided any information with respect to their plans to expand digital CDMA coverage, which would reduce the number of subscribers with decreased access to emergency services if required to transition to location-capable phones. In addition, Petitioners do not justify why they each request the same amount of time to comply with the ninety-five percent penetration threshold, given their differences in numbers of analog, TDMA, and CDMA subscribers, and the fact that some offer TDMA and some do not.⁶³ Finally,

⁵⁸ See MMC Petition at 8; NWMC Petition at 3, 6; IVC Petition at 4, 7 (stating that a number of its TDMA customers, “understanding that their digital roaming service may change when migrating to the CDMA technology, have opted to continue utilizing their TDMA handsets for now.”).

⁵⁹ MMC Petition at 5-6; NWMC Petition at 4; Cellular 29 Petition at 3-4; Lyrix Petition at 3-4; IVC Petition at 4.

⁶⁰ MMC Petition at 6; NWMC Petition at 4; Cellular 29 Petition at 3-4; Lyrix Petition at 3-4; IVC Petition at 4.

⁶¹ See MMC Petition at 7, 10; NWMC Petition at 5, 8; Cellular 29 Petition at 5, 7; Lyrix Petition at 5, 7; IVC Petition at 5, 8.

⁶² Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

⁶³ See *supra* notes 25, 51, and 57.

Petitioners do not adequately explain the basis for requesting thirteen months. For these reasons, we afford Petitioners a limited extension of one year following release of this *Order*, or until October 28, 2006, to achieve ninety-five percent penetration among their subscribers of location-capable handsets.⁶⁴

22. As part of its request for an extension of time until January 31, 2007 to achieve ninety-five percent penetration among their subscribers of location-capable handsets, Petitioners also seek to exclude from this calculation their respective numbers of existing analog handsets. Petitioners contend that “because of limitations in the propagation characteristics of low-power digital handsets as compared with analog phones,” subscribers in the most rural portions of their service areas would be unable to place any calls unless they had the benefit of the extended range afforded by analog handsets.⁶⁵ Petitioners request that they “not be required to count analog handsets in the calculation of the 95% benchmark of Section 20.18(g)(1)(v) until the sunset of the analog service obligation in February, 2008,”⁶⁶ notwithstanding that their analog customers “hav[e] been informed of the inability of those handsets to provide locational information during the placement of a 911 call.”⁶⁷ Petitioners state that “[t]o the extent necessary to achieve compliance . . . [they] will, beginning February 6, 2008, cease supporting analog handsets.”⁶⁸

23. We cannot categorically allow Petitioners to exclude an entire segment of their subscribership from the ninety-five percent calculation, without effectively amending and undermining the purpose of the ninety-five percent penetration requirement. Under such an exclusion, potentially large numbers of customers would never receive the benefits of Phase II location information merely because of their use of analog handsets – without reference to any other factors. Even as examined in these particular cases, we find that the record does not support grant at this time without more detailed information. For instance, Petitioners do not explain how many customers presently depend on the expanded range afforded by use of analog phones in order to place emergency calls, nor provide information concerning any steps to explore the possible development of higher-power CDMA handsets to serve those customers or concerning their plans to expand digital CDMA coverage to include the same footprint now provided using analog or TDMA technologies. We decline to permit Petitioners to exclude analog phones for purposes of calculating the location-capable handset penetration rate. Thus, Petitioners cannot rely on excluding analog customers as a basis for establishing a clear path to achieving full compliance with the handset penetration requirement within the requested extension period.

24. As a condition of the relief granted herein, we expect Petitioners to actively inform and educate their customers concerning the advantages of having location-capable handsets, and to keep the PSAPs located within their service areas abreast of their progress in achieving ninety-five percent penetration. Specifically, we will condition the relief on each Petitioner, following release of this *Order*, and as an ongoing obligation until each Petitioner achieves a ninety-five percent handset penetration rate among its subscribers of location-capable handsets, (1) notifying its customers, such as by billing inserts, when it reasonably expects PSAPs will make valid requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and

⁶⁴ We note that the Commission has not received any objections from the public safety community with respect to the instant Petitions.

⁶⁵ See MMC Petition at 7; NWMC Petition at 5; Cellular 29 Petition at 4; Lyrix Petition at 4-5; IVC Petition at 5.

⁶⁶ MMC Petition at 9; NWMC Petition at 7; Cellular 29 Petition at 6; Lyrix Petition at 6; IVC Petition at 7.

⁶⁷ MMC Petition at 11; NWMC Petition at 9; Cellular 29 Petition at 8; Lyrix Petition at 8; IVC Petition at 9.

⁶⁸ NWMC Petition at 9.

(2) actively working with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

25. Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 ninety-five percent handset penetration requirement granted herein, we will require each Petitioner to file status reports every February 1, May 1, August 1, and November 1, until two years following release of this *Order*,⁶⁹ which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the estimated dates on which Phase II service will be available to PSAPs served by each Petitioner's network; (3) the status of its coordination efforts with PSAPs for alternative ninety-five percent handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the extent of subscribers located in areas with analog service only; (6) the percentage of its customers with location-capable phones; and (7) until each satisfies the ninety-five percent penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the October 28, 2006 revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect Petitioners to achieve compliance as quickly as possible.

26. Specifically with respect to MMC's request for waiver of the 100 percent handset activation requirement, we will require MMC, in addition to the conditions and reporting requirements above, to file the following: (1) in its February 1, 2006 status report required in paragraph 25, information on the status of its efforts to achieve compliance with the 100 percent handset activation requirement, and (2) a report due April 1, 2006 that informs the Commission whether it has, by that date, ensured that 100 percent of all new digital handsets activated are location-capable.

IV. CONCLUSION

27. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Petitioners are entitled to a limited extension of the December 31, 2005 requirement that they achieve ninety-five percent penetration among their subscribers of location-capable handsets. Specifically, we extend the date that Petitioners must achieve ninety-five percent penetration until October 28, 2006, and impose conditions and reporting requirements to ensure that Petitioners achieve full compliance with the Commission's E911 requirements. Furthermore, we cannot grant MMC's request for an extension of the 100 percent handset activation requirement under the Commission's E911 waiver criteria. We will, however, give MMC additional time to augment the record with information that shows a clear path to full compliance with the 100 percent handset activation requirement for the Commission's consideration, and impose conditions and reporting requirement to monitor progress towards compliance. Without further action on MMC's request, the deadline for ensuring that 100 percent of all new digital handsets activated will be April 1, 2006. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

⁶⁹ We note that we are requiring Petitioners to file status reports beyond the one year from release of this *Order* by which we otherwise require Petitioners to achieve ninety-five percent penetration among their subscribers of location-capable handsets. We believe it is important to continue monitoring Petitioners' progress for an additional twelve months beyond this compliance deadline.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

29. IT IS FURTHER ORDERED, that the Petition of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules IS GRANTED IN PART, to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be October 28, 2006.

30. IT IS FURTHER ORDERED, that an extension of time IS GRANTED to Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular to augment the record for its Waiver of Section 20.18(g)(1)(iv) of the Commission's Rules, to the extent described above, and subject to the conditions and reporting requirements specified herein.

31. IT IS FURTHER ORDERED that, without further Commission action on the Petition of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular for Waiver of Section 20.18(g)(1)(iv) of the Commission's Rules, the deadline for compliance with Section 20.18(g)(1)(iv) will be April 1, 2006.

32. IT IS FURTHER ORDERED, that the Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules IS GRANTED IN PART, to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be October 28, 2006.

33. IT IS FURTHER ORDERED, that the Petition of RSA 1 Limited Partnership dba Cellular 29 Plus for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules IS GRANTED IN PART, to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be October 28, 2006.

34. IT IS FURTHER ORDERED, that the Petition of Iowa RSA 2 Limited Partnership dba Lyrrix for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules IS GRANTED IN PART, to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be October 28, 2006.

35. IT IS FURTHER ORDERED, that the Petition of Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, Illinois Valley Cellular RSA 2-III Partnership for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules IS GRANTED IN PART, to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be October 28, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary